

DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Acie Cole, Jr.,)	CASE NO. 4:06cv2743
Petitioner-Defendant)	(Criminal Case no. 4:02CR253
v.)	<u>MEMORANDUM OPINION</u>
United States of America)	
Respondent-Plaintiff)	
)	

The Court published a Memorandum Opinion on September 13, 2007 (docket #105) which stated in part as follows:

What is apparent from the above dialogue is that the Court failed to give the defendant the opportunity to allocute before pronouncing sentence. In the Court's view, that constitutes a constitutional error which requires re-sentencing. Consequently, the application for a writ of habeas corpus is granted. The sentence previously pronounced is Vacated and the Court will order the defendant to be returned for re-sentencing at which time the defendant will have the opportunity to engage in allocution prior to the pronouncement of the sentence. The Court also finds that no other constitutional violations have been established by the defendant and so his remedy in this case is limited to a re-sentencing at which time he will have the opportunity to engage in allocution. The Court will publish a separate order granting the writ and establishing a date for re-sentencing.

The Court then ordered the return of the petitioner-defendant for re-sentencing for November 9, 2007. Thereafter, the petitioner-defendant filed a notice of appeal with the Sixth Circuit divesting this Court of jurisdiction to proceed with the re-sentencing.

(4:06cv2743)
(Criminal Case no. 4:02CR253)

The defendant's appeal has been dismissed. Consequently, the Court schedules re-sentencing for June 5, 2008, at 1:00 p.m.

The Court will not appoint counsel for Acie Cole, Jr. as Jacqueline Staten of Third Floor, 895 Cove Street, Newport Beach, California 92660, is now counsel of record for Acie Cole, Jr. The clerk is directed to mail a copy of the Memorandum Opinion to counsel of record, including Jacqueline Staten and also Acie Cole, Jr. at Reg. No. 54687-060, United States Penitentiary Victorville, P.O. Box 5500, Adelanto, California 92301.

The United States Marshal is requested to return Acie Cole to the district within 7 days before the sentencing hearing.

April 21, 2008
Date

/s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge